IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.18771 OF 2007
AND
M.P.NOS.2 AND 3 OF 2007

Ragas Dental College and Hospital
rep. by its Principal,
Dr.S.Ramachandran,
2/102, East Coast Road,
Uthandi,
Chennai-600 119. .. Petitioner

Vs.

1.Government of India,
rep. by its Secretary,
Ministry of Health & Family Welfare,
(Department of Health &
Family Welfare)
Nirman Bhavan,
New Delhi-110 011.
2.The Dental Council of India,
rep. by its Secretary,
Aaiwan-E-Galib Marg,
Kotla Road, New Delhi-110 002.
3.The Tamilnadu Dr.M.G.R. Medical
University,
rep. by its Registrar,
No.69, Anna Salai,
Guindy, Chennai-600 032. .. Respondents

This writ petition has been preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records of the respondents, relating to the order of the first respondent in No.V.12017/10/2006-DE, dated 27.4.2007 and to quash the same in so far as it reduced the intake from 3 seats to 2 seats in the PG Course in Community Dentistry of the petitioner institution and to direct the respondents to forthwith restore the full intake of 3 seats in PG course in Community Dentistry in the petitioner institution.

For Petitioner : Mr.K.Doraisamy, SC for
M/s.Kandavadivel Doraisami
For Respondents: Mr.P.Wilson,
Assistant Solicitor General of India
for R1
Mr.P.Chandrasekaran for R2
Mrs.A.L.Gandhimathi for R3

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ORDER

The petitioner seeks writ of certiorarified mandamus to quash the order of the first respondent made in No.V.12017/10/2006-DE, dated 27.4.2007 in so far as it reduced the intake from 3 seats to 2 seats in the PG course in Community Dentistry of the petitioner institution and also to direct the respondents to forthwith restore the full intake of 3 seats in PG Course in Community Dentistry in the petitioner institution.

2.The court heard the learned counsel on either side and perused the affidavit filed in support of the writ petition and also the counter affidavit filed by the respondents.

3.The writ petition has arisen under the following facts and circumstances.

a)The petitioner Dental institution was established by Ragas Educational Society in the year 1988-89. The college is running courses in Under Graduate and Post Graduate in Dental Education, after obtaining necessary permission from the Government of India, Dental Council of India and the Tamil Nadu Dr.M.G.R. Medical University. On 10.5.2006, the respondents granted permission for starting MDS Course in the speciality of Community Dentistry with an annual intake of 3 students from the academic year 2006-07 at Ragas Dental College & Hospital at Chennai. Pursuant to the same, the Tamil Nadu Dr.M.G.R. Medical University granted affiliation for the said course.

b)One Dr.M.Sivakumar, Professor and Head of the Department of the Community Dentistry submitted his resignation letter and requested the college to relieve him from duty in order to join some other institution, but in view of the policy, the Dental Council of India communicated to the college vide letter No.DE/22-2006/483A, dated 15.4.2006 that no Post Graduate Faculty approved by the Dental Council of India at the time of starting the course would be permitted to join some other institution for a period of 3 years and relieving order would not be issued. Accordingly, the resignation was neither accepted nor relieving order was issued. A letter was addressed to the Dental Council of India, seeking guidance in that regard, but no communication was received.

c)On 2.2.2007, a communication was received from the Dental Council of India that the Executive Committee does not recommend to the Central Government to renew its permission for 2nd year MDS Course in the speciality of Community Dentistry with 3 seats at Ragas Dental College & Hospital, Chennai due to deficiencies, namely Dr.Shivakumar shown as Professor & HOD, Community Dentistry was not accepted, since his name was also shown in Oxford Dental College unless the Professor & HOD is appointed before 20th February, the further admissions will be stopped. A reply was sent by the petitioner institution on 9.2.2007 to the Secretary, Dental Council of India that one Dr.Haridevaraya Choudhary was appointed as Professor & H.O.D. for the department of Community Dentistry with effect from 9.2.2007 in compliance with the directions of the Dental Council of India. Necessary documents with reference to new appointment for consideration of the Executive Committee was submitted and a request was made to the Dental Council of India to recommend for the renewal of the Central Government's permission for the 2nd year course in the speciality of Community Dentistry.

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d)On 21.2.2007, a letter was received from the Dental Council of India, stating that Dr.Haridevaraya Choudhary appointed as Professor in the department of Community Dentistry was not accepted, since he was also present in the inspection of Kamineni Dental College, Nalgonda on 9th and 10th February, 2007. Further, the Dental Council of India, by a communication, has granted two days time for submitting compliance report for renewal of Central Government permission for the 2nd year MDS Course. Immediately, the institution relieved Dr.Haridevaraya Choudhary from his duty and also informed Dr.Sivakumar to join duty as per the directions of the Dental Council of India. Accordingly, Dr.Sivakumar joined duty on 22.2.2007. The same was also communicated to the Dental Council of India on the very day.

e)While the matter stood thus, on 3.4.2007, a communication was received from the Government of India, dated 30.3.2007 recommending the disallowing of admission in Community Dentistry for the 2nd year batch. An impugned communication was received on 27.4.2007, stating that in continuation of the letter, dated 10.5.2006 on the above subject, it was conveyed that the approval of the Central Government was given for 2nd year renewal of permission for admission of fresh batch of students in the speciality of Community Dentistry with an annual intake capacity of 2 seats instead of 3 seats at the petitioner's institution for the academic year 2007-08. Under these circumstances, this writ petition has been brought forth before this court.

4.In support of the writ petition, the learned Senior Counsel would submit that after the grant of affiliation by the Dr.M.G.R. Medical University and following the permission given by the Government of India and also the Dental Council of India, the particular course in the speciality of Community Dentistry was commenced with an annual intake of 3 students; that it is not in controversy that one Dr.Sivakumar, the Professor and Head of the Department of the Community Dentistry submitted his resignation, but it was not accepted and he was not relieved; that a communication was addressed to the Dental Council of India, seeking guidance, but there was no reply; that on the contrary, a communication was addressed, stating that resignation could not be accepted; that while the matter stood thus, there was a communication that inspection report would indicate that his name was also shown in Oxford Dental College and therefore, deficiency was found; that one Dr.Haridevaraya Choudhary was appointed in the college with effect from 9.2.2007; that thereafter, it was also communicated by the Dental Council of India that the appointment of Dr.Haridevaraya Choudhary was not accepted for the reason that he was also working in Kamineni Dental College, Nalgonda and under these circumstances, a further communication was also addressed that the deficiencies could be rectified within the stipulated period; and that immediately the very next day, Dr.Haridevara Choudhary was relieved and Dr.Sivakumar also rejoined duty and the deficiencies were rectified.

5.The learned Senior Counsel would further submit that on the day when the impugned order was passed reducing 3 seats to 2 seats by the Government of India pursuant to the recommendations made by the Dental Council of India, actually, there was no deficiency; that apart from that, the communication, what is addressed, does not specify any reason, which warranted to reduce the intake; that in the course of the counter, they have invented the reasons that there was no Reader available and that was

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the reason for reduction, but that was not the reason mentioned in the order and under these circumstances, even without notice or enquiry, the order came to be passed contrarily. Hence, it has got to be set aside and a direction has got to be given to the respondents to allow the intake of 3 students and hence, a writ petition has got to be ordered.

6.The learned counsel for the respondents 1 and 2 made sincere attempt to sustain the order under challenge. According to the learned counsel, in the instant case, it is true, originally, the petitioner institution was affiliated. On the recommendation made by the Dental Council of India, the first respondent has permitted the petitioner to have an intake of 3 students. In the instant case, the appointments could be made as per the Rules and every year, it has got to be renewed. For the year 2006-07, permission was granted to have an intake of 3 students, but so far as 2007-08 was concerned, permission was given to have an intake of 2 students for the reason that in the instant case, deficiencies were noticed. All communications between the parties would clearly indicate that there were sufficient reasons to reduce the same.

7.It is an admitted fact that Dr.Sivakumar, Professor and Head of the Department of the Community Dentistry, tendered his resignation. From the communication given by him to the said college, where he was working, it is clear that he has resigned the post and also relieved. Under these circumstances, even as per the affidavit filed by the petitioner, the other professor, namely Dr.Haridevaraya Choudhary, was actually allowed to work from 9.2.2007 and thus, for a period of nearly 8 months, the department was without Professor and this deficiency was noticed and therefore, the Dental Council of India brought the same to the notice of the institution and thus, the petitioner institution has violated the regulations, by accepting the resignation and relieving the Professor Dr.Sivakumar. Once a teaching staff was permitted to joint duty in one institution, he should not be permitted to joint some other institution within a period of three years. In the instant case, accepting the resignation and also relieving the said Dr.Sivakumar was against the rules. Subsequently, Dr.Haridevaraya Choudhary was also admitted into service. It was also noticed that during the relevant time, he was working at Nalgonda and this deficiency was also noticed. Once deficiency was noticed, the Dental Council of India has made a recommendation and on the strength of which, the Government has acted and reduced the intake from 3 to 2.

8.Added further the learned counsel that in the instant case, recommendation was made, since there is deficiency of one Professor; that if to be so, having an intake of 3 students in the P.G. Course, there must be sufficient teaching staff; that the deficiency was not rectified; that the application for renewal must be made within a period of 6 months prior; that in the instant case, the petitioner's request for having 3 intake instead of 2 cannot be done, since for the academic year, now the application cannot be made or entertained and under these circumstances, the writ petition has got to be dismissed.

9.The court has paid its anxious consideration on the submissions made. It is not in controversy that originally, affiliation was given to the petitioner College to have a P.G. Course in the speciality of Community Dentistry. It is also not in controversy that 3 students were allowed to be taken for the academic year 2006-07. Now, the order under

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challenge reads as follows:

> "In continuation of this Ministry's letter of even number dated 10.5.2006 on the above subject, I am directed to convey the approval of the Central Government for 2nd year renewal of permission for admission of fresh batch of students in the speciality of Community Dentistry with an annual intake capacity of 2 seats instead of 3 seats at Ragas Dental College & Hospital, Uthandi, Chennai for the academic session 2007-08."

10.At the outset, it has got to be stated that the order under challenge, dated 27.4.2007 does not speak about any deficiency or any reason, for which intake has been reduced from 3 to 2. What is stated by the respondents' side is that deficiency what was noticed was the main reason for reduction of intake from 3 to 2. Now, the facts that are admitted are one Dr.Sivakumar, the Professor and Head of the Department of the Community Dentistry, submitted his resignation, but it would be quite clear from the materials available that his resignation was never accepted and a communication was addressed, after tendering resignation, though he was not relieved. A communication was addressed by the petitioner's side to the Dental Council of India, seeking guidance, keeping his resignation pending without accepting the same. But, no reply was received. At the same time, further communication was received from the Dental Council of India that so far as Dr.Sivakumar was concerned, his resignation cannot be accepted, since his name was actually shown in Oxford Dental College at the time of inspection. At this juncture, it is to be pointed out that when the Professor and the Head of the Department tendered resignation, the resignation was not accepted. While there was no question of any violation of rules and regulations and in the instant case when resignation was tendered by the Professor, it was not accepted, but it was kept pending and guidance was sought for. Thus, it would be quite clear that the contention put forth by the respondents' side that there was violation noticed cannot be accepted.

11.Secondly, it is also an admitted fact that the institution has employed Dr.Haridevaraya Choudhary with effect from 9.2.2007. A communication in this regard was placed before the Dental Council of India. Subsequently, a communication was received from the Dental Council of India stating that he cannot be allowed to serve in the petitioner institution for the reason that he was found working at Nalgonda at the time of inspection by the authority of the Dental Council of India. At this juncture, it is pertinent to point out that a communication was addressed on 21.2.2007, wherein it reads as follows:

> "In continuation to this office letter No.DE-15(32)-2006/16560 dated 2.2.2007 on the subject noted above, I am directed to state that the deficiencies mentioned therein have not so far been furnished, which may be furnished to this Council within two days, failing which, the Council will not be responsible for any consequences including not recommending the subject matter to the Government of India for the academic session 2007-2008."

A reading of the above would clearly indicate that there were two communications, one is that the appointment of Dr.Haridevaraya Choudhary cannot be accepted and the other communication is on the very day, namely 21.2.2007 that deficiencies are noticed and it must be immediately

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rectified within the time stipulated and if not, consequences would follow and the Dental Council of India was not responsible for the same. Immediately, on receipt of the communication on 21.2.2007, Dr.Haridevaraya Choudhary was relieved and Dr.Sivakumar has assumed charge on the very day. Thus, the deficiencies noticed as per the communication, dated 21.2.2007 have been rectified.

12.Now, at this juncture, the Dental Council of India, who is the second respondent herein, is unable to show what is the other deficiency noticed. Had it been true that there is any other deficiency, there is no impediment for mentioning such deficiency. It is to be pointed out that in the course of the counter, the respondents have come forward to state that Reader should have been available, but there was no Reader available and under these circumstances, that deficiency is felt. At this juncture, the communication was addressed that the intake was reduced from 3 to 2. The order does not speak about the deficiency or reason firstly. Secondly, the Reader was not posted and that was the deficiency, which in the opinion of the court is nothing but an invention. It is a settled proposition of law that when the order was passed, a particular reason was not available or stated and subsequently, when it was found out and they came with a new plea, which is nothing but filling up the lacuna. Had the case of the respondent No.2, Dental Council of India, is true and correct that there was deficiency, there was no impediment for allowing the institution to run and to have the intake from 3 to 2. According to the Dental Council of India, the deficiency was the reason for recommending the reduction from 3 to 2, which in the opinion of the court was not at all available during the relevant time.

13.The only deficiency that could be seen was that for a particular period, the Professor of the College has absented himself and has tendered resignation, but it was not accepted and he was allowed to continue to be in service. Thus, there was no fault on the part of the institution at the time when the order came to be passed and in the opinion of the court, there was no deficiency. The last contention put forth by the respondents' side that the application should have been made before 6 months and now, the period for the academic year is over and hence, it should not have been entertained, cannot be accepted for the simple reason that the communications were between the institution and the Dental Council of India for all along the period. Now, the order has been passed without assigning any reason and under these circumstances, it is also being challenged before this court. When the matters are pending in the court, now they cannot plea that the period was over and therefore, the institution has to make application for the next academic year and the same could be considered. The said plea cannot be either sound or reasonable or accepted. Under these circumstances, the court has to necessarily reject the contentions put forth by the learned counsel for the respondents. It is a fit and proper case where the order passed by the first respondent has got to be struck down and a writ has got to be granted as one asked for.

14.At this juncture, the learned counsel for the respondents would submit that once academic year has already been commenced, no question of intake of 3 students for the academic year 2007-08 would arise. The learned counsel for the petitioner would submit that the order of the first respondent from making the intake from 3 to 2 was stayed. Accordingly, 3 students have also been admitted. The statements made by

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the learned counsel on either side were recorded. Under the above stated circumstances, both the first and second respondents are directed to consider the renewal application for permission for the academic year 2007-08. Accordingly, this writ petition is disposed of. No costs. Consequently, the connected MPs are closed.

vvk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary,
Government of India,
The Secretary,
Ministry of Health & Family Welfare,
(Department of Health &
Family Welfare)
Nirman Bhavan,
New Delhi-110 011.

2.The Secretary,
The Dental Council of India,
Aaiwan-E-Galib Marg,
Kotla Road,
New Delhi-110 002.

3.The Registrar,
The Tamilnadu Dr.M.G.R. Medical
University,
No.69, Anna Salai,
Guindy,
Chennai-600 032.

+1 cc to Mr.P.Chandrasekaran, Advocate Sr.No.58988.

+1 cc to M/s.AL.Gandhimathi, Advocate Sr.No.58985.

+1 cc to Mr.Muthumani Doraisamy, Advocate Sr.No.58972.

+1 cc to Mr.P.Wilson, Advocate Sr.No.59032.

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